IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

:: J U D G M E N T ::

D.B. CIVIL SPECIAL APPEAL (W) NO.381/1993

M/s. Golcha Properties Private Limited
Vs.
Union of India & Ors.

Date of Judgment :: 17-01-2007

P R E S E N T

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri Anant Kasliwal for the appellant.
Shri R.B. Mathur for the respondents.

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BY THE COURT(PER HON'BLE THE CHIEF JUSTICE)(ORAL):

This special appeal is directed against the order of the learned Single Judge dated 15.7.1993 in S.B. Civil Writ Petition no.3147/1993 dismissing the writ petition of the appellant.

The appellant had filed the writ petition challenging the order of the Assessing Officer dated 3.8.1992 rejecting its prayer for waiver of

interest in terms of rule 117A of the Income Tax Rules, 1962 (in short, 'the Rules') as well as the order of the Commissioner of Income Tax (CIT) dated 31.12.1992/12.1.1993 rejecting the appeal preferred against the said order of the Assessing Officer. Rule 117A of the Rules empowers the Assessing Officer to reduce or waive interest payable in the cases and circumstances specified therein.

The case of the appellant-Company is that the Company was in liquidation from 10.5.1968 to 2.11.1979, during this period its affairs were managed by the Official Liquidator. Though the Company was released from liquidation after 2.11.1979, it is said, as the Official Liquidator during the period it remained under liquidation did not prepare balance sheet except income and expenditure accounts as required under rule 298 read with rule 299 of the Companies (Court) Rules, 1959, it could not file proper return on the basis of the audited accounts.

The dispute relates to assessment years 1981-82 to 1986-87. The Company admittedly filed returns for the assessment year 1980-81 pertaining to the accounting year 1979-80 in which the

Company was released from liquidation on 30.5.1980. There is no dispute about the liability as to interest for the period covered by the assessment year 1980-81. Returns for the assessment year 1981-82 onwards were filed as under :-

Assessment year	Date of return
1981-82	04.10.1982
1982-83	30.06.1984
1983-84	24.03.1986
1984-85	24.03.1987
1985-86	09.10.1987
1986-87	29.03.1988

The due date for filing return in all these years was 31st July of the relevant assessment year which means that the returns were filed after the due dates.

Shri Anant Kasliwal, learned counsel for the appellant, submitted that the delay occurred due to the fact that the return for the assessment year 1980-81 had been filed (on 30.5.1980) on the basis of the unaudited accounts, and as and when discoveries were made, revised returns were filed on 12.3.1985 for the assessment year 1982-83, 24.9.1987 for the assessment year 1984-85, 25.5.1988 for the assessment year 1985-86 and

24.11.1988 for the assessment year 1986-87. It was submitted that audit of the accounts for the period relevant to assessment years 1981-82 and 1982-83 was completed only on 6.4.1985. It was submitted that the CIT rejected the claim for waiver on the ground that return for the assessment year 1980-81 had been filed on 30.5.1980 allegedly on the basis of provisional accounts but from the records it appears that there was no change in these accounts in course of proceedings, and therefore the claim that non-finalisation of the accounts for the assessement years 1981-82 to 1986-87 was on account of non-preparation of the accounts for the period during which the Company was under liquidation was not correct. Pointing out that revised returns were filed, as stated above, counsel submitted that rejection of the claim being on a wrong premise, the matter may be remitted to the CIT for re-consideration. In the facts and circumstances, we are not impressed by the plea.

In order to appreciate the point, we may extract the relevant part of the statement/chart which was produced for our perusal in course of hearing as under :-

Asstt. Year	Due date for filing return	Return filed	Date of completion of Audit
1980-81	31.7.1980	30.5.1980 Revised on 21.9.1982 Revised on 28.7.1983 Revised on 23.12.1985	-
1981-82	31.7.1981	4.10.1982	6.4.1985
1982-83	31.7.1982	30.6.1984 Revised on 12.3.1985	6.4.1985
1983-84	31.7.1983	24.3.1986	15.2.1986
1984-85	31.7.1984	24.3.1987 Revised on 24.9.1987	1.8.1987
1985-86	31.7.1985	9.10.1987 Revised on 25.5.1988	9.11.1987
1986-87	31.7.1986	29.3.1988 Revised on 24.11.1988	27.1.1988

From the above statement it would appear that the returns were filed before finalisation of the accounts for the period relevant to the assessment years 1981-82 and 1982-83. Even revised returns for the assessment year 1982-83 was filed before finalisation of the accounts on 12.3.1985. Revised returns were also filed for the assessment years 1984-85, 1985-86 and 1986-87 as indeed for the assessment year 1980-81. The appellant therefore could have filed return by the due dates, and then filed revised returns on the basis of discoveries or finally audited accounts. As a matter of fact, for the assessment year 1986-87,

the initial return itself was filed after finalisation of the accounts on 29.3.1988.

Sub-section (8) of Section 139 of the Act lays down that –

> "Where the return under sub-section (1) or sub-section (2) or sub-section (4) for an assessment year is furnished after the specified date, or is not furnished, then whether or not the Assessing Officer has extended the date for furnishing the return under sub-section (1) or sub-section (2), the assessee shall be liable to pay simple interest . . . . . ."
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> (emphasis added)

Counsel submitted that the appellant does not dispute the leviability of interest and that is how, it applied for waiver of interest otherwise payable in terms of Section 139(8) of the Act. He pointed out that subject matter of dispute is the waiver of interest on account of delay in filing return and not for other omissions.

Five circumstances have been specified in rule 117A of the Rules in which an assessee can apply for reduction or waiver of interest payable under Section 139. There is no dispute between the parties that circumstances specified in clauses (i) to (iv) are not relevant in this case and that waiver was claimed in terms of clause (v). Having

regard to the significance of the provision, it would be appropriate to quote the rule so far as relevant as under :-

> “In respect of assessment relating to an assessment year commencing on or before the first day of April, 1988, the Assessing Officer may reduce or waive the interest payable under section 139 in the cases and in the circumstances mentioned below, namely :-
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> (i) . . . . . .
>
> (ii) . . . . . .
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> (iii) . . . . . .
>
> (iv) . . . . . .
>
> (v) any case in which the assessee produces evidence to the satisfaction of the Assessing Officer that he was prevented by sufficient cause from furnishing the return within time :”

The question for consideration is whether the appellant was prevented by sufficient cause from furnishing the return within time. The word “prevented”, in our opinion, is of great significance. Therein lies the key to the answer. Non-submission of the return for the period during which the Company was in liquidation may constitute a circumstance in which the Company can claim to have been 'prevented' from filing of the return. The question is whether it can contend

that it was prevented from doing so even though it was released from liquidation. May be, the accounts for the years 1981-82 and 1982-83 were finalised on 6.4.1985 but the appellant cannot contend that it was prevented from filing the return for these assessment years. As seen above, the appellant did file return for different years except for the years 1983-84 and 1986-87, before finalisation of the accounts, and also filed revised return on completion of the accounts for the assessment years 1984-85 and 1985-86. In fact, the appellant filed revised returns for the assessment year 1986-87 even though it had filed the first return after completion of the accounts.

At this stage we may deal with the submission of the counsel with reference to rules 298 and 299 of the Companies (Court) Rules. Reference to these rules would appear to be totally misconceived, for, the preparation of accounts on basis of the income and expenditure incurred by the Company is only for the purpose of filing of half-yearly accounts before the Company Judge. The liability to file return under the Income Tax Act is a separate and independent liability and it has no connection with the filing of accounts in the Companies Court under rule 298.

However, as already observed above, non-filing of returns during the period the Company remained in liquidation may constitute a circumstance preventing the Company from filing return. But as there is no dispute in the instant case with respect to the period during which the Company remained in liquidation, it is not necessary for us to go into this aspect any further.

Counsel submitted that the plea constituting sufficient cause for not filing return was accepted by the Assessing Officer inasmuch as no penalty was imposed under Section 271 of the Act. The plea based on same set of facts having been accepted for the purpose of penalty under Section 271 of the Act, the rejection of the plea, on the same set of facts, for the purpose of waiver of interest under rule 117A of the Rules was arbitrary and unjustified.

The submission is totally misconceived as it overlooks the distinction between interest and penalty. We have quoted hereinabove sub-section (8) of Section 139 so far as relevant. The language of the rule “an assessee shall be liable to pay simple interest” unmistakably shows that where the assessee commits defaults within the

meaning of sub-section (8) of Section 139, he becomes liable to pay interest. In contradiction to sub-section (8) of Section 139, Section 271 of the Income Tax Act as it stood at the relevant time, conferred discretion on the assessing officer (besides other authorities) in the matter of imposition of penalty. This would be evident from a bare reading of the provision as under :-

> "**Failure to furnish returns, comply with notices, concealment of income, etc.** (1) If the Income-tax Officer or the Appellate Assistant Commissioner or the Commissioner (Appeals) in the course of any proceedings under this Act, is satisfied that any person -
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> (a) has without reasonable cause failed to furnish the return of total income which he was required to furnish under sub-section (1) of section 139 or by notice given under sub-section (2) of section 139 or section 148 or has without reasonable cause failed to furnish it within the time allowed and in the manner required by sub-section (1) of section 139 or by such notice, as the case may be, or
>
> (b) . . . . . .
>
> he may direct that such person shall pay by way of penalty,-
> . . . . . ."
>
> (emphasis added)

From conjoint reading of Sections 139(8) and 271(1)(a) it is manifest that while the Assessing Officer has no discretion but to award interest subject of course to his power to reduce

or waive interest in terms of rule 117A, Section 271 confers discretion on him to impose penalty in the circumstances specified therein.

The distinction between interest and penalty was succinctly stated by the Kerala High Court in Kerala State Cashew Development Corporation Limited Vs. Income-Tax Officer, (1990) 186 ITR 521, as under :-

> "It is indisputable that interest under section 139(8) is levied by way of compensation and no by way of penalty. The interest is levied because the default in furnishing the return in time results in postponement of payment of tax by the assessee, thereby depriving the State of a corresponding amount of revenue for the period of delay. It was to compensate for the loss so occasioned that Parliament enacted the provision for payment of interest. The very period for which interest is levied points to the nature of the levy as compensatory. It is true that penalty may also be imposed under section 271(1)(a) for the very same default. But that is a punishment for the assessee's failure to comply with a statutory duty and is deterrent in character. Interest is compensatory while penalty is punitive. It must be remembered that when the statute provides a time limit within which an assessee should do a particular thing, it is also entitled to provide, inter alia, for compensation by way of interest in case the act is not done in time and thereby loss is caused to the Revenue. The fact that penalty is also imposable for the delayed furnishing of the return is irrelevant as penalty is punitive while interest is compensatory and each is complementary to the other."

The decision was rendered following the decisions of the Supreme Court in Central Provinces Manganese Ore Co. Ltd. V. CIT,(1986) 160 ITR 961 (SC) and Ganesh Dass Sreeram V. ITO,(1988) 169 ITR 221(SC).

In the above view of the matter, the submission of the counsel that the set of facts constituting circumstance for not filing the return within time having been accepted as sufficient cause for the purpose of Section 271 of the Act, the Assessing Officer should have accepted the cause as sufficient for the purposes of rule 117A must be rejected being devoid of substance. The test is not whether there was sufficient cause, the true test is whether the cause prevented the assessee from filing the return within time.

In the above view of the matter, we find no substance in the plea that the matter should be sent back to the CIT for re-consideration only because the Commissioner made certain observation which is not consistent with the records. We are of the view that notwithstanding the incorrect observation referred to above, in the facts and circumstances the conclusion cannot be said to be erroneous. There being no dispute that the returns were filed after the due dates, in absence of any

circumstance suggesting that the appellant was prevented from filing the returns, the authority did not commit any error in rejecting the application for waiver of interest.

In these premises, we find no error in the order of the learned Single Judge dismissing the writ petition of the appellant.

In the result, the appeal fails and is hereby dismissed but without any order as to costs.

[MOHAMMAD RAFIQ],J. **[S.N.JHA],CJ.**

Skant/-